

1 **PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

2 Name Garrison Eric S.
(Last) (First) (Initial)

3 Prisoner Number 2338560

4 Institutional Address County Jail #5, P.O. Box 67
San Bruno, CA, 94066

5
6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**

8 Eric S. Garrison

9 (Enter the full name of plaintiff in this action.)

10 vs.
11 Superior Court of the State
of California for the City
and County of San Francisco

12 (Enter the full name of respondent(s) or jailor in this action)

13 Case No. 27

14 (To be provided by the clerk of court)

15 **PETITION FOR A WRIT
OF HABEAS CORPUS**

CW

(PR)

16 **Read Comments Carefully Before Filling In**

17 **When and Where to File**

18 You should file in the Northern District if you were convicted and sentenced in one of these
19 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,
20 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in
21 this district if you are challenging the manner in which your sentence is being executed, such as loss of
22 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

23 If you are challenging your conviction or sentence and you were not convicted and sentenced in
24 one of the above-named fifteen counties, your petition will likely be transferred to the United States
25 District Court for the district in which the state court that convicted and sentenced you is located. If
26 you are challenging the execution of your sentence and you are not in prison in one of these counties,
27 your petition will likely be transferred to the district court for the district that includes the institution
28 where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda

13 County Superior Court, Oakland):

14 San Francisco Superior Court San Francisco

15 Court Location

16 (b) Case number, if known 2261739

17 (c) Date and terms of sentence June 29, 2006

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
 19 parole or probation, etc.) Yes No

20 Where?

21 Name of Institution: San Bruno County Jail #5

22 Address: B.O. Box 67, San Bruno CA. 94066

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 H&S Safety 11350 possession of a controlled substance

1 petition? Yes No 2 (c) Was there an opinion? Yes No 3 (d) Did you seek permission to file a late appeal under Rule 31(a)? Yes No 4 If you did, give the name of the court and the result:
5 _____
6 _____
7 _____8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes No 10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: _____

19 Type of Proceeding: _____

20 Grounds raised (Be brief but specific):
21 a. _____
22 b. _____
23 c. _____
24 d. _____

25 Result: _____ Date of Result: _____

26 II. Name of Court: _____

27 Type of Proceeding: _____

28 Grounds raised (Be brief but specific):

1 a. _____

2 b. _____

3 c. _____

4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: _____

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____

10 b. _____

11 c. _____

12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____

18 b. _____

19 c. _____

20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____

No

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?
28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: "Due Process Violation."

6

7 Supporting Facts: On 4/6/06 6 days from the day I was arrested -
8 I instructed my Defense attorney Henry Doering to have the case
9 dismissed on the grounds of Reaccusation Delay before Judge Mc-
10 Cabe. She denied the motion, but discharged it for lack of probable
11 Cause which left the D.A. a chance to refile case

12 Claim Two:

13 "I ineffective Assistants of Counsel."

14 Supporting Facts: Defense Counsel made no attempt to challenge
15 prosecutors response to Dismissal Motion that I had to inform
16 him of. And at the preliminary hearing my defense attorney
17 exhibited the same negligence during a motion to Suppress.

18 Claim Three: Double Jeopardy

19 Supporting Facts: On 6/29/06 I was found guilty for an uncha-
20 rged lesser included offense which resulted in my convict-
21 ion before Jerome T. Benson

22

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 These 3 grounds was not previously presented on direct appeal
26 nor with conjunction of Direct Appeal due to the advice of
27 my appeal Lawyer Jeremy T. Price which he advised me
28 that these issues have no merit.

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 People v Pinedo (2005) 128 CA 4th 968, 27 CR 3d 562; 5th and 14th
5 Amend. VS Const.; 78 Harv. L Rev. 1434; US Const. Amend 6

6 _____
7 Do you have an attorney for this petition? Yes No

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12 Executed on 12/7/07
13 Date

Eric S. Garrison

14 Signature of Petitioner
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20 (Rev. 6/02)
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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

INSTRUCTIONS FOR PRISONER'S IN FORMA PAUPERIS APPLICATION

You must submit to the court a completed Prisoner's In Forma Pauperis Application if you are unable to pay the entire filing fee at the time you file your complaint or petition. Your application must include copies of the prisoner trust account statement showing transactions for the last six months and a certificate of funds in prisoner's account, signed by an authorized officer of the institution.

A. Non-habeas Civil Actions

The filing fee for any civil action other than a habeas is \$150.00. Even if you are granted leave to proceed in forma pauperis, you must still pay the full amount of the court's filing fee, but the fee will be paid in several installments. 28 U.S.C. § 1915.

You must pay an initial partial filing fee of 20 percent of the greater of (a) the average monthly deposits to your account for the 6-month period immediately before the complaint was filed or (b) the average monthly balance in your account for the 6-month period immediately before the complaint was filed. The court will use the information provided on the certificate of funds and the trust account statement to determine the filing fee immediately due and will send instructions to you and the prison trust account office for payment if in forma pauperis status is granted.

After the initial partial filing fee is paid, your prison's trust account office will forward to the court each month 20 percent of the most recent month's income to your prison trust account, to the extent the account balance exceeds ten dollars (\$10.00). Monthly payments will be required until the full filing fee is paid. If you have no funds over ten dollars (\$10.00) in your account, you will not be required to pay part of the filing fee that month.

If your application to proceed in forma pauperis is granted, you will be liable for the full \$150.00 filing fee even if your civil action is dismissed. That means the court will continue to collect payments until the entire filing fee is paid. However, if you do not submit this completed application the action will be dismissed without prejudice and the filing fee will not be collected.

B. Habeas Actions

The filing fee for a habeas action is \$5.00. If you are granted leave to proceed in forma pauperis you will not be required to pay any portion of this fee. If you are not granted leave to proceed in forma pauperis you must pay the fee in one payment and not in installments. If you use a habeas form to file a non-habeas civil action, you will be required to pay the \$150.00 filing fee applicable to all non-habeas civil actions.

1 - THE COURT: ALL RIGHT. OBJECTION'S OVERRULED. THE LAW SAYS
2 THAT I HAVE TO GIVE IT. LET'S SEE WHAT PARTS.

3 **MR. BASSAN:** MAY I HAVE A MOMENT TO EXPLAIN THIS TO MY
4 CLIENT?

5 | THE COURT: SURE.

6 MR. BASSAN: THANK YOU, YOUR HONOR, FOR THE TIME.

7 (BRIEF PAUSE.)

8 **THE COURT:** I'M GOING TO MODIFY IT SO THAT IT READS
9 CONSISTENTLY WITH CALCRIM 2303. I WILL TAKE OUT "TWO OR MORE
10 PEOPLE." I'M TAKING OUT "AGREEMENT TO BUY." I'M TAKING OUT THE
11 DESCRIPTION DEFENSE.

12 | MR. BASSAN: 2302 YOU MEAN?

13 | THE COURT: 2304, WHICH IS SIMPLE POSSESSION.

14 **MR. BASSAN:** RIGHT, AND THAT'S GOING TO BE CONSISTENT WITH
15 2302.

16 | THE COURT: RIGHT.

17 | MR. BASSAN: YES. THANK YOU.

18 | THE COURT: GOOD AFTERNOON.

19 | **UNIDENTIFIED VOICE:** GOOD A

20 | **THE COURT:** CAN WE HELP YOU?

21 UNIDENTIFIED VOICE: WE THOU

22 COURT.

23 **THE COURT:** YOU'RE WELCOME TO VISIT OUR COURT, AND YOU'RE
24 WELCOME TO SIT DOWN AND WATCH WHAT WE'RE DOING. I HAVE TO SORT
25 OF WARN YOU WE'RE NOT DOING ANYTHING THAT'S VERY EXCITING. IT'S
26 IMPORTANT, BUT IT'S NOT EXCITING.

27 **UNIDENTIFIED VOICE:** ALL RIGHT. WE'LL JUST HANG OUT FOR A
28 MINUTE.

1 **THE COURT:** WHAT WE'RE DOING IS WE'RE DECIDING -- I'M
2 DECIDING WHAT INSTRUCTIONS I'M GOING TO GIVE TO THE JURY WHEN
3 THE JURY COMES BACK TOMORROW AFTER NOON. I HAVE TO INSTRUCT
4 THEM ON WHAT THE LAW IS, AND THE ATTORNEYS ARE ASSISTING ME IN
5 PREPARING CORRECT INSTRUCTIONS FOR ME TO DELIVER TO THE JURY
6 ROOM.

7 **UNIDENTIFIED VOICE:** WE'D LIKE TO STAY FOR A MINUTE.

8 **THE COURT:** SIT IN THE FRONT ROW SO YOU CAN SEE OR HEAR AS
9 MUCH AS YOU CAN.

10 I MIGHT SAY IN THIS CASE THE DEFENDANT IS CHARGED WITH
11 POSSESSION OF -- UNLAWFUL POSSESSION OF COCAINE FOR THE PURPOSE
12 OF SELLING IT. SO, THE INSTRUCTIONS ARE GOING TO DEAL WITH --
13 WE JUST FINISHED TALKING ABOUT WHAT THE DEFINITIONS OF THOSE
14 OFFENSES ARE.

15 **UNIDENTIFIED VOICE:** THANK YOU.

16 **THE COURT:** WE'RE NOW DOWN TO CALCRIM 3500, WHICH IS THE
17 NUMBER OF THIS INSTRUCTION.

18 **MR. BASSAN:** I'M SORRY. WHICH? I'M SORRY. MR. GARRISON
19 WANTS ME TO INDICATE, AND I THINK IT IS AN APPROPRIATE
20 INDICATION, THAT HIS -- THAT OUR ARGUMENT FOR EXCLUDING THE
21 LESSER INCLUDED OFFENSE 23 -- WHICH IS IN CALCRIM 2302, AND
22 GENERALLY FOR ALLOWING A LESSER OFFENSE WOULD BE NOT ONLY
23 STATUTORY GROUNDS, BUT BASED ON FIFTH AND 14TH AMENDMENTS OF THE
24 U.S. CONSTITUTION; THAT TO ALLOW HIM TO BE CHARGED AND CONVICTED
25 WITH A LESSER INCLUDED OFFENSE, WHICH WAS NOT CHARGED IN THE
26 INFORMATION, IS A VIOLATION OF DOUBLE JEOPARDY.

27 I HAVE EXPLAINED TO MR. GARRISON MY UNDERSTANDING OF THE
28 CURRENT STATE OF THE LAW, BUT I'M MAKING THIS ARGUMENT BECAUSE